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In the Supreme Court of the United States

OCTOBER TERM, 1956

UNITED STATES EX REL. STEVE AVRAMOVICH, PETITIONER

v.

JOHN M. LEHMANN, OFFICER IN CHARGE, IMMIGRATION AND NATURALIZATION SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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OPINION BELOW

The opinion of the Court of Appeals (Pet. 11–15; R. 2c–5c) is reported at 235 F. 2d 260.

JURISDICTION

The judgment of the Court of Appeals was rendered on August 1, 1956 (Pet. 15; R. 1c) and a petition for rehearing (R. 6c–12c) was denied on October 12, 1956 (Pet. 15; R. 13c). The petition for a writ of certiorari was filed on January 9, 1957. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Whether the order for the deportation of petitioner as one who, after entry, had been a member of

the Communist Party is based on evidence showing more than nominal membership in the Party.

2. Whether this Court's decision in *Galvan* v. *Press*, 347 U. S. 522, should be overruled.

STATUTES INVOLVED

Section 22 of the Internal Security Act of 1950 enacted on September 23, 1950, 64 Stat. 1006, 1008, provided in part as follows:

> That any alien who is a member of any one of the following classes shall be excluded from admission into the United States:
>
> * * * * *
>
> (2) Aliens who, at any time, shall be or shall have been members of any of the following classes:
>
> * * * * *
>
> (C) Aliens who are members of or affiliated with (i) the Communist Party of the United States * * *, (iv) the Communist or other totalitarian party of any State of the United States, of any foreign state, or of any political or geographical subdivision of any foreign state; (v) any section, subsidiary, branch, affiliate, or subdivision of any such association or party, * * *.

Section 4 under the aforesaid Section 22 provided in part:

> (a) Any alien who was at the time of entering the United States, or has been at any time thereafter, * * * a member of any one of the classes of aliens enumerated in section 1 (2) of this Act, shall, upon the warrant of the Attorney General, be taken into custody and

> deported in the manner provided in the Immigration Act of February 5, 1917. The provisions of this section shall be applicable to the classes of aliens mentioned in this Act, irrespective of the time of their entry into the United States.[1]

Section 1 of the Act of March 28, 1951, 65 Stat. 28, 8 U. S. C. [1946 ed., Supp. V] 137–9, provided as follows:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Attorney General is hereby authorized and directed to provide by regulations that the terms "members of" and "affiliated with" where used in the Act of October 16, 1918, as amended, shall include only membership or affiliation which is or was voluntary, and shall not include membership or affiliation which is or was solely (a) when under sixteen years of age, (b) by operation of law, or (c) for purposes of obtaining employment, food rations, or other essentials of living, and where necessary for such purposes.

STATEMENT

Petitioner seeks review of the judgment of the Court of Appeals which affirmed the dismissal by the United States District Court for the Northern District of Ohio of his petition for a writ of habeas corpus. That petition attacked the validity of an

[1] These provisions were repealed by Section 403 (a) (16) of the Immigration and Nationality Act of June 27, 1952 (66 Stat. 163, 279). The 1952 Act recodified and reenacted these provisions without material change. See Section 241 (a) (6) (C), 66 Stat. 204, 8 U. S. C. 1251 (a) (6) (C).

order which directed petitioner's deportation on the ground that he was an alien who, after entry, had been a member of the Communist Party.

Petitioner, who was born in 1890 in that part of Europe which later became Yugoslavia, first entered the United States in 1911 (F. 76, 78, 79).[2] He left the United States in 1920 for Yugoslavia and returned in October 1925 with a wife and two children (F. 72, 73, 76, 124).[3] He was a shoe repairman by trade and engaged in such business in the United States (F. 51, 70, 124). In 1931, after the birth of a third child in the United States (F. 72), petitioner and his family went to Soviet Russia as a part of a group under contract with Amtorg Trading Corporation, a representative of the Soviet Government in the United States (F. 61–62, 75–76). In Russia, he was employed as an instructor in shoe repairing and manufacturing (F. 118). He returned to the United States in 1934 (F. 75). Since then he has resided continuously in Akron, Ohio, where he has continued to operate a shoe repair business (F. 70, 73–74). His petition for naturalization was denied in 1947 under the Nationality Act of 1940 on the basis of his membership in the Communist Party (F. 78, 124).

A warrant of arrest, dated September 1949, initiated the deportation proceedings against petitioner. It charged him with membership in an organization which advocated the violent overthrow of the United

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[2] The designation "F." refers to the immigration file, which we are herewith lodging with the Court. This file was part of the record in the Court of Appeals.

[3] These two children later became naturalized in the United States, and one of them served in the United States Army (F. 72).

States Government (F. 27). A hearing was held on this charge on January 17, 1950, but was invalidated by reason of the subsequent decision of this Court in *Wong Yang Sung* v. *McGrath*, 339 U. S. 33, holding that deportation hearings must be conducted in accordance with the Administrative Procedure Act. A hearing *de novo* conducted in compliance with the provisions of the Administrative Procedure Act was held in August 1950, and by stipulation the transcript and exhibits of the earlier hearing were made part of the record in the new hearing (F. 82–84, 131). The hearing was reopened on November 29, 1950, to permit the introduction of additional evidence (F. 93). At this hearing, the examining officer lodged the additional charge against petitioner that, after entry, he had been a member of the Communist Party—a specific ground for deportation under the then newly enacted Internal Security Act of 1950, *supra*, p. 2. Petitioner was permitted but did not desire additional time to meet the new charge (F. 91).

At the deportation hearings, petitioner testified that he had been a member of the Communist Party, International Workers Order (I. W. O.), and the Serbian Orthodox Church (F. 69). He had been a member of the I. W. O. since 1935 and during his membership he had been President, Minute Secretary (for which he received $7 a month), and a member of a three-man committee which audited the books of the Financial Secretary (F. 67, 68). He said he joined the I. W. O. principally to obtain its life insurance and sick benefits, and that discussions at the meetings never included advocacy of the overthrow of the

United States Government (F. 55). Upon advice of counsel, he resigned in November 1949, after his arrest under the deportation order (F. 69). The I. W. O. requested the American Protective Association to assist petitioner in the deportation matter but he refused its help (F. 50, 105–106).

Petitioner testified that he became a member of the Communist Party of the United States, West Side Unit of Akron, Ohio, in May or June 1935, after his return from Russia (F. 65, 67). He said he joined at the request and insistence of his customers, with the idea that it might help his business (F. 51, 105, 112).[4] He resigned in 1938 when he read about Earl Browder's arrest. At that time, petitioner had already applied for citizenship and was afraid that his membership in the Communist Party would interfere with his application (F. 65, 66). While a member, petitioner held no office (F. 64). He paid dues of 10 cents a month, but he did not attend meetings "very much." About two of the meetings were held in his store (F. 57, 64–65). He said that discussions at the meetings which he attended were centered principally around W. P. A. relief and how to secure employment; and that there never was any talk about the overthrow of the United States Government. He said that while he was a member he was unaware that the Party was anything but another political party which was interested in bettering conditions for the worker. He did not know then that it advocated the overthrow of our government by force and violence. Although

[4] Petitioner said that, after he joined the organization, he received more business "once in a while" (F. 107).

he read some of the Party's literature, it related mainly to improving the lot of the workingman (F. 56–57, 110). He testified that when he learned in 1938, through the Browder incident, about the subversive nature of the Communist Party, he immediately resigned (F. 65). When he joined the Party he did not take a loyalty oath to the Party but merely signed a folder with a card (F. 59, 113). After he ceased his membership in the Party in 1938, he did not attend any meetings, even though the remaining members unsuccessfully urged him to return to the Party—the last time "somewheres after 1940" (F. 63–64).

Petitioner said that he bought some pamphlets from the Party and subscribed to the Daily Worker for a few months. The paper was mailed to him until 1940 even though he had ceased paying for it. In 1940, with the assistance of his postmaster, he wrote to the organization to stop its delivery to him (F. 64). While a member of the Party, he assisted in obtaining signatures for a petition to secure the election of one of the Party members in a city election (F. 99).

As to his trip to Soviet Russia for Amtorg, petitioner said that his reasons for going were to make a living and to enable his wife, who was homesick for her homeland (Yugoslavia), to make a visit there. Petitioner also testified that he himself did not enter into a contract or deal directly with Amtorg, and that he paid the expenses of the trip to Russia out of his own pocket (F. 61, 62–63). While in Russia he instructed in shoe repairing, but did not join the Communist Party although requested to do so. He did,

however, become a member of "the professional organization." When asked if the professional organization was a part of the Communist Party, he said, "They were all one, I guess, but it is different between Communist Party, but it is one thing, I guess" (F. 59–60, 115–116). Petitioner did not consider himself a member of the Communist Party while he was in Russia (F. 59), although he was aware that Russia was communistic (F. 102). The expenses of his return trip to the United States were paid by "some Russian organization" (F. 101).

Petitioner said that he was, and had been for fifteen years, an active member of the Orthodox Church, and that he gave the church $1,000 in 1947—money which he had to borrow. His children were baptized in that church (F. 58, 89–90, 108, 109).

At the conclusion of the hearings, the hearing officer found petitioner deportable as an alien who had been, after entry, a member of the Communist Party (F. 135–140). His recommendation was approved by the Assistant Commissioner. An appeal to the Board of Immigration Appeals was dismissed, the Board concluding that petitioner's deportability was established by his own testimony (F. 154–155, 141–143). A motion for a rehearing alleging that the Communist Party of Akron, in which petitioner admitted membership, had no connection with the Communist Party of the United States was denied by the Board of Immigration Appeals on the ground that the evidence adduced at the hearing established the contrary (F. 161–164).

An order directing petitioner's deportation was issued on August 24, 1951 (F. 141–143). After petitioner was taken into custody in July 1954, for deportation, the petition for a writ of habeas corpus was filed. The District Court denied the writ. The Court of Appeals, affirming the order of the District Court, held that the decision of this Court in *Galvan* v. *Press*, 347 U. S. 522, was controlling and that "there was substantial evidence that appellant was an active member of the Communist Party of the United States" (Pet. 14–15).

ARGUMENT

1. Like the petitioner in *Rowoldt* v. *Perfetto*, No. 34, this Term, *sub judice*, petitioner here seeks (Pet. 6–7) to bring his case within the exceptions relating to involuntary or unknowing membership. See Act of March 28, 1951, *supra*, p. 3, and *Galvan* v. *Press*, 347 U. S. 522. In *Galvan*, this Court observed (pp. 526–528) that Congress had not intended to include within the term "members of," as used in Section 22 of the Internal Security Act of 1950 (*supra*, p. 2), those aliens who had joined the Communist Party when they were children, or who had become members by operation of law, or who had joined "to obtain the necessities of life," or those who "accidentally, artificially, or unconsciously in appearance only, are found to be members of or affiliated with an organization of whose platforms and purposes they have no real knowledge." The legislative history of Section 22, as well as the pertinent congressional comments on the Act of March 28, 1951, make it clear that Congress considered as involuntary only the membership

of those aliens, principally "Iron Curtain" emigres, who had been coerced to join communist organizations in their own countries for compelling economic reasons and as a minimum condition of subsistence. This history is fully set forth in the government's brief in *Rowoldt* v. *Perfetto*, No. 34, this Term, pp. 20–28, to which we respectfully refer the Court.

Petitioner is clearly not within any excepted category. He freely joined the Communist Party in a country and under conditions which did not make such membership a condition of employment. His own statements in the record, *supra*, p. 6, indicate at best that he joined the Party to improve his economic situation, and not as a minimum condition of subsistence.

Petitioner suggests (Pet. 5, 7) that his membership in the Communist Party of Akron was not necessarily membership in the Communist Party of the United States and, in addition, that he was ignorant of the Party's objectives. But the record shows that petitioner admitted that his membership was in the local unit of the Communist Party of the United States. And membership in any branch or subdivision of the Communist Party is ground for deportation (see Section 22, *supra*, p. 2). Furthermore, it is plain that petitioner is not a person unacquainted with communism. He went to Soviet Russia in the 1930's under contract with Amtorg, a representative of the Soviet Government. When he returned after a three-year visit, he joined the Communist Party and also the I. W. O., being an officer in the latter organization until the deportation

proceedings were initiated in 1949. His asserted ignorance of the objectives of the Communist Party must be considered in the light of his close association with communism over a period of many years. In any event, as this Court held in *Galvan*, in dealing with a similar contention, awareness of the Communist Party's purpose and program is not an essential condition of deportability under Section 22 so long as the alien knew that the organization which he joined was the Communist Party. 347 U. S. at 526.

2. Like Rowoldt, petitioner argues (Pet. 2, 7) that Section 22 is unconstitutional and urges a reconsideration of *Galvan*, which upheld the constitutionality of that Section as applied to a past member of the Communist Party. On this issue, we respectfully refer the Court to the government's brief in *Rowoldt* v. *Perfetto*, No. 34, pp. 38–43.

CONCLUSION

It is submitted that this case falls squarely within the ruling of this Court in *Galvan* v. *Press*. The Court, however, may wish to defer action on the petition until after it has rendered its decision in *Rowoldt* v. *Perfetto*.

Respectfully submitted,

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